The application by the plaintiffs for further review of the bill of costs is dismissed with costs.

*Order accordingly.*

Solicitors: *Arifin & Partners; Joginder Singh & Co.*

Reported by *Ng Sheau Jiuan*

## Wong Leong Sing & Anor v Wong Tan Ann

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO F57 OF 1980
LC VOHRAH J
29 AUGUST 1988

*Land Law – Application for delivery of vacant possession and damages – Dispute about purchase of land from registered owner's deceased father – Land not transferred – Restriction in interest prohibiting disposal without approval of authority – Restriction operative for ten years – Whether defendant is beneficial owner or licensee – Plaintiffs are transferees of land – Allegation of fraud and conspiracy in land transfer – Contracts Act 1950, s 24*

The plaintiffs' claim is for delivery of vacant possession and damages in respect of land identified as QT(M) 497 Lot 546 in the Mukim of Kuala Lumpur, Selangor ('the said land'), of which they became registered owners. The defendant alleges fraud and conspiracy on the plaintiffs' part in taking a transfer of the title to the said land and in his counterclaim prays for delivery of the title to him on the ground that he is the beneficial owner.

The defendant and one Wong Chin Kuang ('the deceased'), the father of the plaintiffs, were relatives. The deceased's daughter Wong Choh Yuen (PW5) who is the plaintiffs' elder sister, whilst residing in Tampin with her husband in 1958, applied for the alienation to her of the said land for a dwelling-house site. Her application was approved on the terms and conditions set out in the notice, one of which prevented her from transferring or otherwise disposing of the said land for a period of ten years from the date of the registration of the approved application without the approval of the collector. In 1959, the deceased entered into an arrangement with the defendant whereby the defendant caused a house to be built on the said land and entered into occupation thereof. In 1966 the defendant allowed PW5 to build a house on the said land. Subsequently, PW5's approved application was replaced by a document of qualified title QT(M) No 497 which was registered and issued to her on 12 March 1968 whereupon she became the registered proprietor of the said land. On 17 November 1977, PW5 transferred the said land to her younger brothers, the plaintiffs. On 10 February 1979, the plaintiffs sent the defendant a notice to quit the said land.

The learned judge was requested to consider the following issues, namely: (a) whether the defendant is a licensee at will of the said land; (b) whether the defendant is the beneficial owner of the said land; and (c) whether the plaintiffs registered as proprietors of the said land are in fact trustees for the defendant.

**Held,** allowing the plaintiffs' claim for delivery of vacant possession and dismissing the defendant's counterclaim with costs:

(1) From the facts, the learned judge found on a balance of probabilities that the defendant has not established that he originally took possession of the said land as purchaser as alleged in his pleadings.

(2) As a matter of law, having regard to the defendant's version of the sale of the said land by the deceased, even if he had the authority to do so on behalf of the registered owner, the sale would have been unlawful by reason of s 24 of the Contracts Act 1950 as being of such a nature that if permitted would defeat the provisions of any law and it is therefore by reason of that section void.

(3) At the time when the alleged sale was to have taken place, the restrictions in interest appeared in the notice of approval of application that the land shall not be transferred, nor shall it be leased, tenanted, charged or otherwise disposed of, without the prior written approval of the Collector of Land Revenue, and the restriction in interest shall cease to be operative after the expiration of ten years from the date of the registration of the title. As the restriction was in operation at the material time and as no prior written approval of the Collector of Land Revenue was shown to have been obtained, the alleged sale of the said land was illegal and of no effect. Accordingly, the defendant was a licensee at will of the said land.

(4) The learned judge ordered that the defendant and those claiming under him deliver up vacant possession of the said land within three months thereof. No damages were awarded to the plaintiffs as they were mere transferees of the said land. Further, the transfer to the plaintiffs did not amount to an exercise which was fraudulent or an act 'to cheat and deprive' the defendant as alleged by him.

**Case referred to**
1 *Hee Cheng* v *Krishnan* [1955] MLJ 103 (refd)

**Legislation referred to**
Contracts Act 1950 s 24

*JG Bernatt* for the plaintiffs.
*Paramjit Singh Gill* for the defendant.

*Cur Adv Vult*

**LC Vohrah J:** The plaintiffs' claim is for delivery of vacant possession and damages in respect of land identified as QT(M) 497 Lot 546 in the Mukim of Kuala Lumpur, Selangor ('the said land') of which they became registered owners. The defendant in his statement of defence alleges fraud and conspiracy on their part in taking a transfer of the title to the said land and in his counterclaim prays for delivery of the title to him on the ground that he is the beneficial owner.

I find the following facts either admitted or proved. The defendant and one Wong Chin Kuang ('the deceased'), the father of the plaintiffs, were relatives and in 1959 each of them worked as a cook in an English home. At that time the deceased was staying at house No 54, Sungei Way New Village on Lot No 547 which is adjacent to the said land. The deceased's daughter Wong Choh Yuen (PW5) who is elder to the plaintiffs, in 1958, two years after her marriage and whilst residing in Tam-

pin with her husband, applied for the alienation to her of the said land for a dwelling-house site. The Collector of Land Revenue by a notice dated 4 July 1958 (P5) informed her that her application had been approved on the terms and conditions set out in the notice, one of which prevented her from transferring or otherwise disposing of the said land for a period of ten years from the date of the registration of the approved application without the approval of the collector. The notice also stated that on payment of the sum of $65.50 made up of premium, rent, survey fees etc, her name would be recorded in the Roll of Approved Applications. In the event her name was recorded in Approved Application No 382/59. The deceased in what was a Chinese patriarchal family conducted the affairs relating to the said land on behalf of PW5 and in 1959, because of his blood relationship with the defendant, entered into an arrangement with the defendant whereby the defendant caused a house to be built on the said land and entered into occupation thereof (and continues to do so.) In 1966 the defendant allowed PW5 to build a house on the said land. Subsequently PW5's approved application was replaced by a document of qualified title QT(M) No 497 which was registered and issued to her on 12 March 1968 whereupon she became the registered proprietor of the said land. The QT granted her a lease for 30 years expiring on 11 March 1998. On 17 November 1977, PW5 transferred the said land to her younger brothers, the plaintiffs. On 10 February 1979, the plaintiffs sent the defendant a notice to quit the said land.

Of the four issues that were formulated at the beginning of the trial for consideration of the court, I have now at the end of the trial, at the request of both counsel, to consider only three, namely:

(1) whether the defendant is a licensee at will of the said land;
(2) whether the defendant is the beneficial owner of the said land; and
(3) whether the plaintiffs registered as proprietors of the said land are in fact trustees for the defendant.

To consider what rights the defendant has in relation to the said land it is in my view important to ascertain what the actual arrangement was between the defendant and the deceased which resulted in the defendant building the house and entering into occupation of the said land. We have now only the version of the surviving party. The defendant's evidence is that the deceased some time in 1959 visited him at his employer's residence and offered to sell him the said land for $900 because his daughter who held the QT did not require the said land and wanted to sell it as she was staying in Tampin. He accepted the offer on that very day and soon afterwards on 10 April 1959 paid the deceased the sum asked for in the presence of PW5, one Lai Ang (now deceased) who was a building contractor and Lai Ang's son (DW2). At the same time he also paid Lai Ang $1,000 towards the cost of building his house on the said land to be completed (and it was in fact completed) by September 1959. His family then moved into the house whilst he remained at his employer's residence. In all the house cost him a total sum of $7,000 which included his expenses for the supply of electricity and water to the house. After entering into occupation he paid all the annual assessment charges but receipts were made out to him in the name of PW5, the last assessment receipt in his possession being for the year 1981. He had never paid any money by way of rental in respect of the said land and when he requested delivery of its title the deceased replied that it was not as yet available. Then in 1966 PW5 built a house on the said land despite his objection. He allowed the house to go up because he was told that if he refused the title deed would not be delivered to him. He laid down no conditions for the building of the house but PW5 'offered the condition' that she would demolish it if he required the land but he would have to pay her compensation for it. No title deed was ever given to him although he had demanded it when the value of the land had increased. Then in the beginning of 1977 the deceased approached him to buy back the said land. He then demanded $30,000 as the re-purchase price. The deceased counter-offered with a figure of $2,000 and the deal fell through. On 5 March 1979 the defendant's solicitors sent a letter to the solicitors for the plaintiffs demanding delivery of the title deed to the said land. On 8 March 1979 the deceased visited him at his house and caused a commotion whereupon he lodged a police report (D9).

In support of the defence, DW2 testified that he had witnessed a meeting some time in April 1959 on the said land when some money passed between the defendant and the deceased. He also saw money passing between the defendant and his late father which was payment towards the cost of materials for the construction of the defendant's house. Also present at this meeting were PW5 and the defendant's son-in-law. A discussion took place at this meeting but he personally did not hear what was said at the discussion nor the conversation as to why money passed between the defendant and the deceased. He only learnt from his father later as they were leaving the scene that the discussion related to the sale and purchase of the said land. He helped his father build the house at a cost of slightly more than $6,000. He was then about 20 years old.

The evidence of DW2 as to the nature of the discussion between the defendant and the deceased is hearsay evidence. I do not think too much weight can be given to it as I am not satisfied as to the accuracy of his recollection since he has admitted he could not remember the meeting very vividly.

PW5, who according to the defence was at this meeting, categorically denied that she was ever present at the discussion or ever received the $900 as alleged by the defendant. She did, however, admit meeting the defendant in March 1977 when the defendant offered to give up the said land for the sum of $30,000 and also executing immediately afterwards the document P6 dated 25 March 1977 whereby she agreed to sell the said land to the plaintiffs for the sum of $12,000.

If the defendant's version is true that the said land was actually sold in 1959 to him by the deceased (acting presumably as agent of PW5) how is it that he allowed a proper residential building to be erected on the said land in 1966 without much ado and accepted a 'condition' proffered by PW5 that compensation would be paid to her should she have to demolish the building if required to do so by him. I find this so-called condition rather odd and inconsistent with his claim of ownership of the said land. Further if there had really been an outright sale of the said land to the defendant why did he not take any steps to enforce his rights until 5 March 1979 when he caused his solicitors to issue the letter demanding delivery of the title deed only after receiving the notice to quit P1 from the plaintiffs' solicitors. And how does he explain his instructing another firm of solicitors to send a second letter P2 dated 24 April 1979, ostensibly a second reply to the same notice to quit, in which it was stated that the consideration for the purchase of the said land was $500 instead of $900? For all the above reasons, I find on a balance of probabilities that the defendant has not established that he originally took possession of the said land as purchaser as alleged in his pleadings.

Quite apart from the actual facts of the transactional relationship between the defendant and the deceased, I am of the view that even as a matter of law having regard to the defendant's version of the facts that the sale of the said land by the deceased, even if he had the authority to do so on behalf of PW5, would have been, to borrow the words of Thomson J (as he then was) in *Hee Cheng* v *Krishnan*,[1] 'unlawful by reason of s 24 of the Contracts Act 1950 as being of such a nature that if permitted would defeat the provisions of any law and that it is therefore by reason of that section void'. At the time when the alleged sale was to have taken place, namely, on 10 April 1959, the following restrictions in interest appeared in the notice of approval of application:

(i) The land hereby alienated shall not be transferred, nor shall it be leased, tenanted, charged or otherwise disposed of, without the prior written approval of the Collector of Land Revenue, such approval shall in the case of transfer lease or charge be endorsed on the memorandum of transfer, charge or lease.

(ii) ...

(iii) The above restriction in interest shall cease to be operative after the expiration of ten years from the date of the registration of this title or from such prior date as may be approved by the Ruler-in-Council.

Restriction (i) was certainly in existence in 1959 soon after PW5's application for the said land was approved and as no prior written approval of the Collector of Land Revenue was shown to have been obtained, the alleged sale of the said land was, in my view, illegal and of no effect.

Accordingly, I find that the defendant is a licensee at will of the said land and the other two issues for determination would call for no consideration.

In the event, I make an order that the defendant and those claiming under him do deliver up vacant possession of the said land within three months hereof. With regard to the plaintiffs' claim for damages, I agree with counsel for the defendant that the plaintiffs were mere transferees of the QT from their sister PW5 as I am of the view that the transfer was effected and the plans were drawn up in respect of the proposed building on the said land for the sole purpose of fortifying the case against the defendant. I do not think this is an appropriate case for damages to be awarded. That said, I must also say that I do not think that the transfer can in any way be considered to amount to an exercise which was fraudulent or an act 'to cheat and deprive' the defendant of the said land.

I order that costs be paid by the defendant.

*Order accordingly.*

Solicitors: *Baharuddin Bernatt, Tan & Ker; Gill & Tang.*

Reported by *Wong Kim Fatt*

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## Teck Yow Brothers Hand-Bag Trading Company v Maharani Supermarket Sdn Bhd

HIGH COURT (JOHOR BAHRU) – COMPANIES WINDING-UP NO 42-23 OF 1987
ABU MANSOR J
15 AUGUST 1988

*Companies and Corporations – Winding up – Application for winding up opposed by creditor – Whether company unable to pay debts and ought to be wound up – Notice – Failure to comply with rules – Winding-Up Rules, r 24 – Companies Act 1965, s 218(2)(a), (b) & (c)*

This was an application by the petitioner for the winding up of the respondent company. A creditor, the landlord of the premises, objected to the application. It was alleged that the company was indebted to the petitioner for $4,093. The objector had levied distress after the commencement of the petition for winding up and the distress realized a sum of $61,000. The amount due to the objector was $45,000.

**Held**, granting the petition:

(1) The objector had interest in the subject matter of the winding up and has locus standi.